

REMARKS

This amendment is in response to the final Official Action dated February 12, 2007. Claims 1, 9, 24, 29, and 31 have been amended, claims 10-13 and 30 have been cancelled, and claims 34-39 have been added; as such, claims 1, 3, 4, 7-9, 22-29, and 31-39 are currently pending in connection with the present application. Claims 1, 24, and 31 are independent claims. Reconsideration and allowance is requested in view of the claim amendments and the following remarks.

35 U.S.C. § 103 Rejections

Claims 1, 3, 4, 7-10, 12, and 22-33 have been rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,757,479 to Niikawa ("Niikawa") in view of U.S. Patent No. 6,329,787 to Ito et al. ("Ito"), in further view of U.S. Patent Pub. 2007/0271508 to Audet ("Audet") and U.S. Patent No. 6,577,811 to Kikuchi et al. ("Kikuchi"). Applicant respectfully traverses this rejection.

This rejection is traversed at least for the following reasons.

"The Patent and Trademark Office (PTO) has the burden of showing a prima facie case of obviousness." *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993). "In determining the propriety of the Patent Office case for prima facie obviousness, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the proposed substitution or other modification." *In re Taborsky*, 502 F.2d 775, 780-81, 183 USPQ 50, 55 (CCPA 1974). Moreover, *prima facie* obviousness of a claimed invention is established "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

The term "prior art" as used in section 103 refers at least to the statutory material named in 35 U.S.C. § 102. *Riverwood International Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 66 USPQ2d

1331 (Fed. Cir. 2003)(citing *In re Wertheim*, 646 F.2d 527, 532, 209 USPQ 554, 560 (CCPA 1981)).

Moreover, the 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions >if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph<. M.P.E.P. §21363.03(III).

The above-identified application was filed in the United States on March 31, 2004.

Audet refers to an Application Publication published on November 22, 2007. However, the publication date for Audet is later than the filing date of the present application of March 31, 2004.

Audet is an application filed on July 7, 2007. However, the filing date for Audet of July 7, 2007 is later than the filing date of the present application of March 31, 2004.

Audet is a continuation-in-part of Parent Application No. 11/693,669, filed on March 29, 2007. However, the filing date for the Parent Application of March 29, 2007 is later than the filing date of the present application of March 31, 2004.

Parent Application is itself a continuation-in-part of Grandparent Application 10/265,443, filed on October 7, 2002.

Therefore, Audet only qualifies as prior art to the extent that the cited material in Audet is disclosed in Grandparent Application 10/265,443 (Patent Pub. 2007/0214169).

Audet fails to remedy the deficiencies of Niikawa, Ito, and Kikuchi because Audet fails to qualify as prior art under 35 U.S.C. 103 or 35 U.S.C. 102, for the purposes for which it is cited.

In the present case Audet is cited for the purpose to providing a reference disclosing “displaying functional controls.” For this claim limitation the Office Action cites paragraphs 130, 144, and 236 of Audet.

All of the cited portions of Audet, i.e., paragraphs 130, 144, and 236, have been modified, relative to Grandparent Application 10/265,443 (Patent Pub. 2007/0214169) to disclose the cited features, which constitute new matter with respect to Grandparent Application 10/265,443.

In paragraph 130 of Audet, the only basis for *displaying functional controls* lies in the mention of a touch screen. The Office Action has failed to show that Grandparent Application 10/265,443 properly supports this subject matter within Audet. On the Contrary, a touch screen is not present in the grandparent application (for comparison see ¶115 in the grandparent application).

In paragraph 144 of Audet is also cited as the basis for *displaying functional controls*. The Office Action has failed to show that Grandparent Application 10/265,443 properly supports this subject matter within Audet. Audet only includes touch screen devices as a result of new matter not present in the Grandparent Application 10/265,443 (for comparison see ¶128 in the Grandparent Application).

The final paragraph cited in Audet, paragraph 236, is contained in a section of Audet titled “Other uses of the SMLOI.” The Office Action has failed to show that Grandparent Application 10/265,443 properly supports this subject matter within Audet. Furthermore, the section titled “Other uses of the SMLOI” and its subject matter is nonexistent in the Grandparent Application 10/265,443, and refers to figures not provided in the Grandparent Application.

As such the combination of the relied upon references is inherently flawed, because the basis for which Audet is cited does not pre-date the present application. As such, this basis cannot provide the necessary teaching or suggestion to overcome the claimed invention. Accordingly Applicant submits that a *prima facie* case of obviousness for claims 1, 3, 4, 7-10, 12, and 22-33 has not been presented.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. SOA-0387 from which the undersigned is authorized to draw.

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Respectfully submitted,

By  4/9/2010

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